Prosecutor v. *Kyle-Little*[1] and *Hashim* v. *Public Prosecutor.*[2]

In *Kyle-Little's* case, *supra,* I said that the words "other document" should be construed to refer to paper writing in the same category and possessing the same character as a receipt or account, e.g. "bills, cheques, indents, payroll and invoices." The examples cited therein were never meant to be exhaustive. In that light I held that a "pipe" was not a document within the meaning assigned to it under section 4 (c) of the Act.

In the instant case I am asked to construe that a medical certificate is not a document within the meaning stipulated by that section. Whilst it is clear that a "pipe" does not possess the character of paper writing a medical certificate such as the one in the instant case does.

The essence of section 4(c) is the *use,* knowingly and with intent to deceive his principal, *of any receipt, account or other document in respect of which the principal is interested* and as I said in *Kyle-Little's* case a distinct genus apparent from the words used is that it possesses this character of paper writing dealing with money matters. Since a medical certificate unlike a pipe is paper writing the next thing to consider is whether such certificate possesses that other character. For this purpose it is essential to consider the facts of the present case. When the appellant absented himself for two days he made use of two certificates which purported to certify he was sick. That entitled the appellant to two days paid leave and on the strength of the certificates he was indeed paid two days' wages. On those facts it would be unreasonable to construe that such certificates do not deal with money matters and evidently these certificates are documents in respect of which the appellant's principal was interested.

To my mind, such certificates must be construed as having come in the category of receipt, account, etc., and for purposes of section 4(c) of the Prevention of Corruption Act, 1961, the words "other document" shall include such medical certificates.

I would for reasons which I have stated dismiss the appeal.

Appeal dismissed.

Solicitors: *Datuk Seenivasagam & Co.*

FATIMAH & ORS. v. SAFETY INSURANCE CO. SDN. BHD.

[O.C.J. (Abdul Hamid J.) December 15, 1972]

[Kuala Lumpur — Civil Suit No. 1066 of 1971]

Insurance — Damages award — Repudiation by insurers.

Road Traffic — Public service vehicle — Whether there is distinction between a taxi cab and a public hire car — Road Traffic Ordinance, 1958, s. 93(2).

As a result of a fatal accident, the plaintiffs obtained judgment against one Tay and Bu in the sum of $30,000 and costs. The deceased was travelling in a motor taxi driven by Tay and owned by Bu. The vehicle was at the relevant date insured by the Safety Insurance Co. Sdn. Bhd. The plaintiffs claimed against the insurers to be indemnified in the sum due. The insurers repudiated liability contending Tay was not a person in the employ of Bu. They also contended that in this case the vehicle was used as a taxi cab and not as a public hire car as limited by the policy.

Held: (1) on the evidence, Tay drove the vehicle not only for the owner's purposes but also with his consent or permission. Therefore, he was a driver in the insured's employ and was driving with the insured's permission;

(2) insofar as the statutory requirement of compulsory insurance cover for a public service vehicle is concerned it is immaterial whether that public service vehicle is a hire car or a taxi cab.

Cases referred to:-

(1) *New Zealand Insurance Co. Ltd.* v. *Sinnadorai* [1969] 1 M.L.J. 183.

(2) *Letchumi & Anor.* v. *The Asia Insurance Co. Ltd.* [1972] 2 M.L.J. 105.

(3) *Ormrod & Anor.* v. *Crosville Motor Services Ltd. & Anor.* [1953] 1 W.L.R. 409.

(4) *Ormrod & Anor.* v. *Crosvilee Motor Services Ltd. & Anor.* [1953] 1 W.L.R. 1120, C.A.

(5) *Rambarran* v. *Gurrucharran* [1970] 1 All E.R. 749, P.C.

CIVIL SUIT.

M. Sivalingam for the plaintiffs.

S. Krishnalingam for the defendants.

Abdul Hamid J. On September 26, 1971 the plaintiffs obtained judgment against one Tay Ah May and Bu Teang Teck in the High Court Muar for damages in the sum of $30,000 and costs. The injured Osman bin Haji Alias (deceased), husband of the first plaintiff, was at the time of the accident travelling in motor taxi No. BE. 5871 driven by Tay Ah May and owned by Bu Teang Teck. The owner was insured at the relevant date against third party risks with the Safety Insurance Company Sendirian Berhad. The plaintiffs now claim against the Safety Insurance Company to be indemnified in the sum of $30,000.

The insurers repudiate liability contending that Tay Ah My was not a person in the employ of Bu Teang Teck. They further contend that in this case the vehicle was used as a taxi cab and not as a public hire car as limited by the policy.

As for the insurers' second contention that the vehicle was not covered by the policy as it was used as a taxi Mr. S. Krishnalingam argues that there is a distinction between a taxi cab and public hire car under section 93(2) of the Road Traffic Ordinance, 1958.

I fail to see any merit in the argument. Section 93 of the Ordinance merely classifies the category or

categories of public service vehicles. Insofar as the statutory requirement of compulsory insurance cover for public service vehicle it is immaterial whether that public service vehicle is a hire car or a taxi cab.

Apart from the definition under section 2 of the Ordinance which states that "public service vehicle" means a motor vehicle used for carrying passengers for hire or reward or for any other consideration, support for my proposition may be found in the Federal Court case of *New Zealand Insurance Company Limited* v. *Sinnadorai*[1] where at p. 185 Ong Hock Thye C.J. after quoting the relevant portion of section 75(1) of the Road Traffic Ordinance had this to say —

"In plain language this means that insurance cover is compulsory in respect of (a) all third parties other than passengers carried by the insured, either for hire or reward, that is to say, in public service vehicles, ..."

Now, the real question at issue is whether Tay was one of the persons insured by the policy. Evidence was given by Douglas Francisco Moroh an insurance investigator to the effect that Tay hired the taxi from one Ah Seng paying $20 per day and that Tay himself never saw the owner of the taxi.

Tay however said that "On 27.3.67 I met with an accident. I drove vehicle No. BE. 5871. It belongs to someone else. It belonged to one Bu Teang Teck. As I was a spare driver I took over the taxi on that day. At that time he was residing in Singapore." Tay further said that he took over the taxi on that day from one Ah Seng and had to pay $20. The taxi was given out to Ah Seng and Ah Seng also had to pay the owner $20.

The facts of this case are somewhat similar to the facts in *Letchumi and Another* v. *The Asia Insurance Co., Ltd.*[2] except that there Lim Siew Liew to whom the taxi was hired out, testified that the owner had told him the taxi was hired to himself only and that he alone could drive it. He was further told not to rehire it to another person without the owner's knowledge or permission. There is no evidence of such express prohibition here. It is not therefore unreasonable to infer that Ah Seng, if at all there was such a person, had authority on behalf of the owner to employ another to drive the taxi, collect the $20 and pay to him (owner).

On the evidence before me I am also unable to conclude that Tay had not known the owner of the car. Tay did tell Mr. Douglas Francisco Moroh that the owner did pay him a visit at the hospital.

In the instant case there is also no evidence to show who this Ah Seng is. Mr. Douglas Francisco Moroh never interviewed him. In court he stated he did not see anybody else besides Tay. There was no evidence to show that he made any affort to trace him. Tay himself never saw Ah Seng after the accident. In my view, the circumstances in the present case irresistably indicate that there was no such person as Ah Seng. I firmly believe that Ah Seng is purely a fictitious person introduced solely for purpose of establishing that the defendants could not be liable as Tay had taken out the taxi from Ah Seng and was therefore never in the employ of the owner.

On the evidence before me it is my finding that Tay drove the vehicle not only for the owner's purposes but also with his consent or permission. It is my considered judgment that Tay was a driver in the insured's employ and was driving with the insured's permission. [See *Ormrod and Another* v. *Crosville Motor Services LD. and Another;*[3] and *Ormrod and Another* v. *Crosville Motor Services LD. and Another;*[4] see also *Rambarran* v. *Gurrucharran*[5]].

For these reasons I enter judgment for the plaintiffs in the sum of $30,000 and the taxed costs of $2,022.59 and interest at the rate of 6% per annum as from September 26, 1971. I also award the plaintiffs costs of this action.

Order accordingly.

Solicitors: *Lim Kean Chye & Co.; Joseph & Son.*

JUHARI BIN IBRAHIM v. PUBLIC PROSECUTOR

[F.C. (Azmi L.P., Gill F.J. and Syed Othman J.)

January 8, 1973]

[Johore Bahru — Federal Court Criminal Appeal No. 21 of 1972]

Criminal law and Procedure — Defence of alibi — Disclosure of defence — Summing up — Penal Code S. 302.

This is an appeal against the conviction of the appellant for murder. On appeal it was contended that the direction on alibi was insufficient. The learned trial judge had told the jury that where the defence was to be an alibi, it was the duty of the defence to disclose it at the earliest possible opportunity. It was argued that the jury should have been expressly told that the accused was entitled to stand on his right and say nothing and that he was entitled to keep back for reasons which he might think good the nature and details of his defence. It was also contended that the learned trial judge should have explained further to the jury the meaning of murder and culpable homicide not amounting to murder and should have told the jury what was the punishment for murder.

Held, dismissing the appeal: (1) the learned trial judge had no in his summing up made any observation which would amount to an invitation to the jury to form an adverse opinion against the appellant because he had not given an explanation as to his whereabouts at the earliest opportunity available to him. The direction on the defence of alibi was therefore proper;

(2) it was clear from the record that the jury was satisfied with the explanation in the summing up which the learned judge had given and the learned judge was correct in telling the jury that they should only concern themselves with the verdict to be arrived at and that the sentence was a matter for the judge.

Cases referred to:-

(1) *R.* v. *Hoare* [1966] 2 All E.R. 846.

(2) *R.* v. *Davis* (1959) 43 Cr. App. Rep. 215.

(3) *R.* v. *Gerard* (1949) 32 Cr. App. R. 132.

(4) *Haji Suleiman bin Haji Abdul Wahid* v. *Public Prosecutor* [1948] M.L.J. 32.

(5) *Fazal Din* v. *Public Prosecutor* [1949] M.L.J. 123.

FEDERAL COURT.

C. K. G. Pillay for the appellant.

Annuar bin Haji Zainul Abidin (Deputy Public Prosecutor) for the respondent.